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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th October, 2019

+ **FAO 153/2018 & CM No.16505/2018, 16507/2018**

REKHA GUPTA & ANR

..... Appellants

Through: **Mr. Arpit Shukla, Advocate
with Mr. Ambanshu Sahni,
Advocate**

versus

MEENA

..... Respondent

Through: **Nemo.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had instituted a civil suit (Suit No.10484/2016) on 03.03.2008 against the appellants herein (defendants) praying for permanent and mandatory injunction vis-a-vis property described as property No.A-16-A, Block B, Ground Floor, Khasra No.550/1, situated at A-Block, Raju Park, Devli Road, Khanpur, New Delhi-110062, they statedly having purchased the right, title and interest therein including exclusive parking rights at lower ground floor. The dispute concerned the claim of the respondent (the plaintiff) to unhindered use of the parking space beneath the stilt at the ground floor along with access to the water tankers and water pump connected thereto. The appellants had suffered the said case *ex parte*. But, it appears that the trial court was not satisfied with the evidence led by

the respondent (the plaintiff) the suit having been dismissed by judgment dated 27.10.2016. The respondent challenged the said decision before the court of Additional District Judge by first appeal (RCA No.29/2017) in which the appellants, though served, would not scrupulously appear. It appears that in their absence on 12.04.2017 a restraint order was passed in favour of the respondent (plaintiff/appellant) injuncting the appellants (defendants/respondents) from interfering in the enjoyment by the appellant of car parking and with regard to water storage tank. It further appears that the appellants thereafter did participate in the proceedings in the appeal, it statedly still not yet adjudicated upon.

2. Against the above backdrop the respondents/appellants had moved application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 alleging breach and violation of the ad interim injunction order dated 12.04.2017 on account of fixation of a grill causing hindrance to the use of the parking space and access to the underground water tank. Notice of the said application was duly served but the appellants would not appear or contest. On these facts, by order dated 16.04.2018, the first appellate court held the appellants guilty of wilful breach of the *ad-interim* injunction order and directed, *inter alia*, they to be detained in civil prison for a period of three days and for their property to be attached, the restraint order having been reiterated.

3. Against the above backdrop, the present appeal was filed, the plea raised by the appellants being that it was an unintended breach,

the appellants at the same time tendering unconditional apology. The learned Single Judge of this court, then *in seisin* of the matter, by order dated 25.04.2018 directed thus:-

“Notice. Mr. C.M. Goyal, Advocate accepts notice. Reply, if any, be filed in four weeks. Rejoinder thereto, if any, be filed before the next date. At the outset, the learned counsel for the appellants states that the appellants tender unconditional apology for their unintended breach of the Court’s order. Let an affidavit in this regard be filed. The learned counsel also submits that the construction/partition of the parking lot as well as putting up of grills etc., shall be removed forthwith and definitely by tomorrow evening. In other words, the appellants shall restore the status quo ante apropos the injunction order dated 12.04.2017. Photographs of this effect shall be filed in the Court supported by an affidavit with an advance copy of the same to the learned counsel for the respondent. The local police shall also be intimated about the same. It will be open to the appellants to move appropriate application for modification of the said order. Since the impugned order was passed ex parte and concerns their personal liberty, which according to the Court impinges upon their fundamental rights, there will be a stay of the impugned order dated 16.04.2018 till the next date of hearing. Supply of water to the respondent’s first floor shall not be, in any way, hindered by the appellants. The occupants of the said floor would be free to install a booster pump next to their water tank kept on the ground floor with proper sanction, as may be required in law. Renotify on 29.08.2018. A copy of this order be given dasti, to the learned counsel for the parties, under the signature of the Court Master.”

4. It is noted that the respondent had appeared through counsel at the very inception and had also been heard when the above mentioned order was passed.

5. The appellants submitted their respective affidavits sworn on 03.05.2018 confirming due compliance with the above quoted directions, submitting therewith copies of the two photographs taken showing removal of the grill and also a report made on 04.05.2018 vide DD No.16-B lodged with SHO of Police Station Neb Sarai.

6. The matter has been adjourned over the last four dates of hearing. On the preceding date, none appeared for the respondent. The same situation is prevailing today. The respondent has not filed any submissions or material to refute the facts set out in the compliance report made by affidavits. The appellants having made the necessary amends, their unconditional apology is accepted. The impugned order directing their property to be attached or they to be held in civil prison are consequentially set aside.

7. No further directions are called for. The appeal and the applications filed therewith stand disposed of in above terms.

8. *Dasti* under the signature of Court Master.

R.K.GAUBA, J.

OCTOBER 16, 2019

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